

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

APR 07 2010

UNITED STATES OF AMERICA)

v.)

HORACE M. COOPER,)

Defendant.)

No. 09-cr-209-ESH (ESH) U.S. DISTRICT COURT

PLEA AGREEMENT

The United States of America, by and through its undersigned attorneys, and the defendant, HORACE M. COOPER (hereinafter referred to as the "defendant"), personally and through his undersigned counsel, enter into the following agreement:

Charges and Statutory Penalties

1. The defendant agrees to plead guilty to an Information charging him with one count of Making and Using a False Certificate or Writing in violation of Title 18, United States Code, Section 1018 (Class A misdemeanor). The United States agrees to seek a dismissal with prejudice of the pending Indictment as to this defendant, *United States v. Horace M. Cooper*, No. 09-cr-209-ESH (D.D.C.), after sentencing and the time for an appeal has expired.

2. The defendant understands that the sole charge in the Information has the following essential elements, each of which the United States would be required to prove beyond a reasonable doubt at trial:

- a. *First:* The defendant was a person authorized by law of the United States to make or give a certificate or other writing;
- b. *Second:* The defendant knowingly made or delivered as true a certificate or writing;

- c. *Third:* The certificate or writing contained a false statement; and
- d. *Fourth:* The defendant acted with knowledge of the falsity.

3. The defendant understands that the offense charged in the Information carries a maximum sentence of one year of imprisonment pursuant to 18 U.S.C. § 1018, a maximum fine of \$100,000 pursuant to 18 U.S.C. § 3571(b)(5), and a mandatory special assessment of \$25 pursuant to 18 U.S.C. § 3013(a)(1)(A)(iii). The defendant also understands that the Court may impose a term of supervised release of not more than one year following any term of incarceration pursuant to 18 U.S.C. § 3583(b)(3). The defendant also understands that the Court may order the payment of restitution as well as the costs of incarceration, supervision, and prosecution.

4. If the Court accepts the defendant's plea of guilty and the defendant fulfills each of the terms and conditions of this agreement, the United States agrees that it will not further prosecute the defendant for any crimes described in the attached factual basis or for any conduct of the defendant now known to the Public Integrity Section and to the law enforcement agents working with the Public Integrity Section on the present investigation. Nothing in this agreement is intended to provide any limitation of liability arising out of any acts of violence.

Factual Stipulations

5. The defendant agrees that the attached "Factual Basis for Plea" fairly and accurately describes the defendant's actions and involvement in the offense to which the defendant is pleading guilty. The defendant knowingly, voluntarily, and truthfully admits the facts set forth in the Factual Basis for Plea.

Sentencing

6. The defendant is aware that the sentence will be imposed by the Court after considering the Federal Sentencing Guidelines and Policy Statements (hereinafter "Sentencing Guidelines"). The defendant acknowledges and understands that the Court will compute an advisory sentence under the Sentencing Guidelines and that the applicable guidelines will be determined by the Court relying in part on the results of a pre-sentence investigation by the U.S. Probation Office, which investigation will commence after the guilty plea has been entered. The defendant is also aware that, under certain circumstances, the Court may depart from the advisory sentencing guideline range that it has computed, and may raise that advisory sentence up to and including the statutory maximum sentence or lower that advisory sentence. The defendant is further aware and understands that the Court is required to consider the advisory guideline range determined under the Sentencing Guidelines, but is not bound to impose that sentence; the Court is permitted to tailor the ultimate sentence in light of other statutory concerns, and such sentence may be either more severe or less severe than the Sentencing Guidelines' advisory sentence. Knowing these facts, the defendant understands and acknowledges that the Court has the authority to impose any sentence within and up to the statutory maximum authorized by law for the offense identified in paragraph one and that the defendant may not withdraw the plea solely as a result of the sentence imposed.

7. The United States reserves the right to inform the Court and the Probation Office of all facts pertinent to the sentencing process, including all relevant information concerning the offenses committed, whether charged or not, as well as concerning the defendant and the defendant's background. Subject only to the express terms of any agreed-upon sentencing

recommendations contained in this agreement, the United States further reserves the right to make any recommendation as to the quality and quantity of punishment.

8. The defendant is aware that any estimate of the probable sentence or the probable sentencing range relating to the defendant pursuant to the advisory Sentencing Guidelines that the defendant may have received from any source is only a prediction and not a promise, and is not binding on the United States, the Probation Office, or the Court, except as expressly provided in this plea agreement.

Sentencing Guidelines Stipulations

9. The defendant understands that the sentence in this case will be determined by the Court, pursuant to the factors set forth in 18 U.S.C. § 3553(a), including a consideration of the guidelines and policies promulgated by the United States Sentencing Commission, Guidelines Manual (2009) (hereinafter “Sentencing Guidelines” or “U.S.S.G”). Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B), and to assist the Court in determining the appropriate sentence, the parties stipulate to the following:

Offense Level under the Guidelines

10. The offense to which the defendant has agreed to plead guilty – Making and Using a False Certificate or Writing, in violation of 18 U.S.C. § 1018 – is governed by U.S.S.G. § 2B1.1.

11. The Base Offense Level for this offense is six, pursuant to U.S.S.G. § 2B1.1(a)(2).

12. The loss does not exceed \$5,000 and, therefore, there is no increase to the Base Offense Level under U.S.S.G. § 2B1.1(b)(1).

Obstruction of Justice Enhancement

13. As detailed in the attached "Factual Basis for the Stipulated Obstruction of Justice Sentencing Enhancement," the parties stipulate that the two-level enhancement for Obstructing or Impeding the Administration of Justice under U.S.S.G. § 3C1.1 applies to this case.

Acceptance of Responsibility

14. Provided that the defendant clearly demonstrates acceptance of responsibility to the satisfaction of the United States through the defendant's allocution and subsequent conduct prior to the imposition of sentence, the United States agrees that a two-level reduction would be appropriate pursuant to U.S.S.G § 3E1.1(a).

15. The United States, however, may oppose any adjustment for acceptance of responsibility if the defendant: (a) fails to admit a complete factual basis for the plea at the time the defendant is sentenced or at any other time; (b) challenges the adequacy or sufficiency of the United States' offer of proof at any time after the plea is entered; (c) denies involvement in the offense; (d) gives conflicting statements about that involvement or is untruthful with the Court, the United States, or the Probation Office; (e) fails to give complete and accurate information about the defendant's financial status to the Probation Office; (f) obstructs or attempts to obstruct justice, prior to sentencing; (g) has engaged in conduct prior to signing this Plea Agreement which reasonably could be viewed as obstruction or an attempt to obstruct justice, and has failed to fully disclose such conduct to the United States prior to signing this Plea Agreement; (h) fails to appear in Court as required; (i) after signing this Plea Agreement, engages in additional criminal conduct; or (j) attempts to withdraw the plea of guilty.

16. In accordance with the above, the applicable Guidelines Offense Level is six.

Criminal History Category

17. The defendant understands that his Criminal History Category will be determined by the Court after the completion of a pre-sentence investigation by the Probation Office. The defendant acknowledges that the United States has not promised or agreed that the defendant will or will not fall within any particular Criminal History Category and that such determinations could affect his Sentencing Guideline range and/or offense level as well as his ultimate sentence. Based upon the information now available to the United States (including representations by the defense), the parties anticipate that the defendant's Criminal History Category is I.

Applicable Guideline Range

18. Based upon the calculations set forth above, and the assumption made pertaining to the defendant's Criminal History Category, the defendant's stipulated Sentencing Guidelines range is zero to six months (hereinafter the "Stipulated Guidelines Range"). In addition, the parties agree that should the Court impose a fine at Guidelines level six, in accordance with U.S.S.G. § 5E1.2(c)(3), the applicable fine range is \$500 to \$5,000.

19. The parties stipulate and agree that under the Sentencing Guidelines neither a downward nor an upward departure from the Stipulated Guidelines Range set forth above is warranted. Accordingly, neither party will seek such a departure or seek any adjustment not set forth herein. Nor will either party suggest that the Court consider such a departure or adjustment.

Agreement as to Sentencing Allocation

20. The parties further agree that a sentence within the Stipulated Guidelines Range would constitute a reasonable sentence in light of all of the factors set forth in 18 U.S.C.

§ 3553(a). In addition, although not binding on the Probation Office or the Court, neither party will seek a sentence outside of the Stipulated Guidelines Range or suggest that the Court consider a sentence outside of the Stipulated Guidelines Range, unless otherwise provided in this Agreement. The United States agrees that it will not oppose a sentencing recommendation at the low end of the Stipulated Guidelines Range. However, if it is determined based upon new information that the defendant's criminal history category is different from that set forth above, nothing in this Agreement limits the right of the parties to make any arguments regarding where within the sentencing guideline range determined by the Court the defendant should be sentenced or to seek an appropriately adjusted sentencing range.

Release Pending Sentencing

21. The United States agrees that it will not ask that the defendant be detained pending sentencing. The defendant acknowledges, however, that the final decision regarding the defendant's bond status or detention will be made by the Court at the time of the defendant's plea of guilty. Moreover, should the defendant engage in further criminal conduct or violate any conditions of release prior to sentencing, the United States may move to change the defendant's conditions of release or move to revoke the defendant's release.

Court Not Bound by the Plea Agreement

22. It is understood that pursuant to Federal Rules of Criminal Procedure 11(c)(1)(B) and 11(c)(3)(B), the Court is not bound by the above stipulations, either as to questions of fact or as to the parties' determination of the applicable Guidelines range, or other sentencing issues. In the event that the Court considers any Guidelines adjustments, departures, or calculations different from any stipulations contained in this Agreement, or contemplates a sentence outside

the Guidelines range based upon the general sentencing factors listed in 18 U.S.C. § 3553(a), the parties reserve the right to answer any related inquiries from the Court.

23. The parties agree that if the Court does not accept defendant's plea of guilty, then this agreement will be null and void.

Breach of Agreement

24. The defendant understands and agrees that if, after entering this Plea Agreement, the defendant fails specifically to perform or to fulfill completely each and every one of the defendant's obligations under this Plea Agreement, or engages in any criminal activity prior to sentencing, the defendant will have breached this Plea Agreement. In the event of such a breach:

- a. The United States will be free from its obligations under the Agreement.
- b. The defendant will not have the right to withdraw the guilty plea.
- c. The defendant shall be fully subject to criminal prosecution for any other crimes, including perjury and obstruction of justice.
- d. The United States will be free to use against the defendant, directly and indirectly, in any criminal or civil proceeding, all statements made by the defendant and any of the information or materials provided by the defendant, including such statements, information and materials provided pursuant to this Agreement or during the course of any debriefings conducted in anticipation of, or after entry of this Agreement, including the defendant's statements made during proceedings before the Court pursuant to Rule 11 of the Federal Rules of Criminal Procedure.

25. The defendant understands that Federal Rule of Criminal Procedure 11(f) and Federal Rule of Evidence 410 ordinarily limit the admissibility of statements made by a defendant in the course of plea discussions or plea proceedings if a guilty plea is later withdrawn. The defendant knowingly and voluntarily waives the rights which arise under these rules.

26. The defendant understands and agrees that the United States shall only be required to prove a breach of this Plea Agreement by a preponderance of the evidence. The defendant further understands and agrees that the United States need only prove a violation of federal, state, or local criminal law by probable cause in order to establish a breach of this Plea Agreement.

27. Nothing in this Agreement shall be construed to permit the defendant to commit perjury, to make false statements or declarations, to obstruct justice, or to protect the defendant from prosecution for any crimes not included within this Agreement or committed by the defendant after the execution of this Agreement. The defendant understands and agrees that the United States reserves the right to prosecute the defendant for any such offenses. The defendant further understands that any perjury, false statements or declarations, or obstruction of justice relating to the defendant's obligations under this Agreement shall constitute a breach of this Agreement. However, in the event of such a breach, the defendant will not be allowed to withdraw this guilty plea.

Appeal Waiver

28. The defendant is aware that the defendant has the right to challenge the defendant's sentence and guilty plea on direct appeal. The defendant is also aware that the defendant may, in some circumstances, be able to argue that the defendant's guilty plea should be set aside, or sentence set aside or reduced, in a collateral challenge (such as pursuant to a motion

under 28 U.S.C. § 2255). Knowing that, and in consideration of the concessions made by the United States in this Agreement, the defendant knowingly and voluntarily waives his right to appeal or collaterally challenge: (a) the defendant's guilty plea and any other aspect of the defendant's conviction, including, but not limited to, any rulings on pretrial suppression motions or any other pretrial dispositions of motions and issues; and (b) the defendant's sentence or the manner in which his sentence was determined pursuant to 18 U.S.C. § 3742, except to the extent that the Court sentences the defendant to a period of imprisonment longer than the statutory maximum, or the Court departs upward from the applicable Sentencing Guideline range pursuant to the provisions of U.S.S.G. § 5K.2 or based on a consideration of the sentencing factors set forth in 18 U.S.C. § 3553(a).

29. The defendant further understands that nothing in this agreement shall affect Public Integrity's right and/or duty to appeal as set forth in 18 U.S.C. § 3742(b). However, if the United States appeals the defendant's sentence pursuant to § 3742(b), the defendant shall be released from the above waiver of appellate rights. By signing this agreement, the defendant acknowledges that the defendant has discussed the appeal waiver set forth in this agreement with the defendant's attorney. The defendant further agrees, together with the United States, to request that the district court enter a specific finding that the waiver of the defendant's right to appeal the sentence to be imposed in this case was knowing and voluntary.

30. The defendant's waiver of rights to appeal and to bring collateral challenges shall not apply to appeals or challenges based on new legal principles in the District of Columbia Circuit or Supreme Court cases decided after the date of this Agreement that are held by the District of Columbia Circuit or Supreme Court to have retroactive effect.

Waiver of Statute of Limitations

31. The defendant agrees, for purposes of entering into this Agreement, entering his plea of guilty to the one count Information charging him with Making and Using a False Certificate or Writing, in violation of 18 U.S.C. § 1018, being sentenced by this Court, and all other appropriate proceedings and filings relevant to these proceedings, that he will affirmatively and retroactively waive the applicable statute of limitations and consent to the jurisdiction of the U.S. District Court for the District of Columbia. It is the intent of this Agreement that defendant affirmatively and retroactively waive all defenses based on the statute of limitations with respect to defendant's prosecution on the one count Information charging him with Making and Using a False Certificate or Writing, in violation of 18 U.S.C. § 1018.

32. It is further agreed that should any conviction of the defendant resulting from defendant's plea of guilty pursuant to this Agreement be vacated for any reason, then any prosecution of the defendant that is not time-barred by the applicable statute of limitations on the date of the signing of this Agreement – including any counts that the United States has agreed not to prosecute or to dismiss pursuant to this Agreement – may be commenced or reinstated against the defendant, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement or reinstatement of such prosecution.

Complete Agreement

33. No other agreements, promises, understandings, or representations have been made by the parties or their counsel than those contained in writing herein, nor will any such agreements, promises, understandings, or representations be made unless committed to writing and signed by the defendant, defense counsel, and a prosecutor for the Public Integrity Section.


34. The defendant further understands that this Agreement is binding only upon the Public Integrity Section, Criminal Division, United States Department of Justice. This Agreement does not bind the Civil Division or any other United States Attorney's Office, nor does it bind any other state, local, or federal prosecutor. It also does not bar or compromise any civil, tax, or administrative claim pending or that may be made against the defendant.

If the foregoing terms and conditions are satisfactory, the defendant may so indicate by signing the Agreement in the space indicated below and returning the original to the undersigned once it has been signed by the defendant and by defense counsel.

Respectfully submitted,

RAYMOND N. HULSER
Acting Chief
Public Integrity Section

By:


ARMANDO O. BONILLA
MARC C. LEVIN
Trial Attorneys
Public Integrity Section
Criminal Division
U.S. Department of Justice

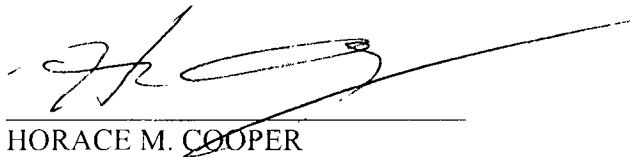
April
March 7, 2010

DEFENDANT'S ACCEPTANCE

I have read this agreement in its entirety and discussed it with my attorneys. I hereby acknowledge that it fully sets forth my agreement with the United States. I further state that no additional promises or representations have been made to me by any official of the United States in connection with this matter. I understand the crimes to which I have agreed to plead guilty, the maximum penalties for those offenses and Sentencing Guideline penalties potentially applicable to them. I am satisfied with the legal representation provided to me by my attorneys. We have had sufficient time to meet and discuss my case. We have discussed the charges against me, possible defenses I might have, the terms of this Plea Agreement and whether I should go to trial. I am entering into this Agreement freely, voluntarily, and knowingly because I am guilty of the offenses to which I am pleading guilty, and I believe this Agreement is in my best interest.

Date: _____

4/7/10

A handwritten signature in black ink, appearing to read 'H. Cooper', is written over a horizontal line.

HORACE M. COOPER
Defendant

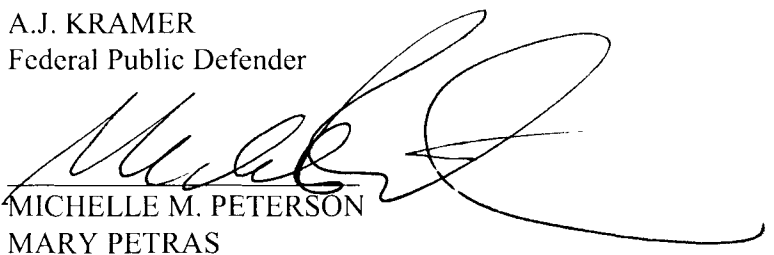
ATTORNEY'S ACKNOWLEDGMENT

We have read each of the pages constituting this Plea Agreement, reviewed them with our client, and discussed the provisions of the Agreement with our client, fully. These pages accurately and completely sets forth the entire Plea Agreement. We concur in our client's desire to plead guilty as set forth in this Agreement.


Date: 4/7/10

A.J. KRAMER
Federal Public Defender

By:


MICHELLE M. PETERSON
MARY PETRAS
Federal Public Defender
for the District of Columbia

And:


RYAN M. MALONE (D.C. # 483172)
COLLEEN A. CONRY (D.C. # 436418)
CASSANDRA H. WELCH (D.C. # 987389)
Ropes & Gray LLP